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SUBJECT: KOSOVO: DEBUNKING MYTHS ON NORTH KOSOVO POWER

REF: A) PRISTINA 465  
B) PRISTINA 541 AND PREVIOUS  
C) BELGRADE 1314

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SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

11. (SBU) SUMMARY: Recent discussions on electricity in the North of Kosovo have become clouded by the introduction of arguments in defense of Serbia's control of the Valac substation, in favor of the start of political negotiations on electricity, and/or for the introduction of a second (Serbian) energy distributor for Kosovo. These arguments are couched in the language of free trade and non-confrontation, but they are based at best on Belgrade spin and at worst on outright falsehoods. The repetition and reification of these myths must be avoided, lest we risk success of energy privatization in Kosovo, Kosovo's sovereignty and broader Balkan regional security. This message provides evidence to dispel such myths. END SUMMARY

MYTH 1: THE KEK SHUTOFF OF POWER TO THE NORTH WAS A POLITICIZATION OF A COMMERCIAL DISPUTE

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12. (SBU) Some international interlocutors, representing the EU, individual EU states and international organizations, have advanced the myth that KEK's October 2009 shutoff of power from Obilic to the Valac substation was its attempt to inject politics into a commercial dispute. The facts tell a different story. While two power lines were down for scheduled maintenance, unseasonably cold weather pushed northern power consumption over 60 MW, placing the substation equipment and lines at risk of catastrophic failure, and months of repair costing millions. When KEK asked its employees to load shed, to bring demand to safe levels, its requests were refused, and so -- for safety reasons, and in the interest of protecting the wider transmission and distribution system -- it stopped providing power to the North through Valac substation (REF A).

13. (SBU) It was an act of nature, not a devious KEK plan, that was behind the October power cutoff. In fact, since late October, when repairs to other north/south lines were completed, KEK has offered

to resume supply from its Obilic generation assets to Valac and the North, but Serbia's electrical distribution and transmission conglomerates EPS and EMS, who control Valac through Kosovo Serb employees present at the station, have refused these requests. There is a written record of such exchanges, including KEK's unconditional offers to restore power. While some in KEK may have preferred to utilize the technical/safety outage that began October 18 to force the issue of regularization of payments for electricity in the North, KEK has not escalated the dispute. KEK's actions have been constructive -- including not only offers for reconnection but also continued KEK payment for electricity for the North generated by the Ujmani hydropower plant -- and it has in the main abstained from public comment. By contrast, Serbian firms have issued letters annexing Kosovo municipalities to their service territory (Ref B) and have disconnected majority ethnic-Albanian villages in Northern municipalities to cut demand. Despite these provocations KEK has kept lines of communication open with Serbian entities to find a true commercial solution to the problem, through an electrical services subcontracting arrangement.

MYTH 2: THE OWNERSHIP OF NORTHERN KOSOVO ELECTRICITY ASSETS, LIKE VALAC, IS DEBATABLE  
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14. (SBU) Kosovo's ownership of the Valac substation and power lines for the transmission and distribution of power in Kosovo, though unchallenged for years, has recently been questioned. Unless UNSCR 1244 and UNMIK itself are questionable, there are no legal grounds to question Kosovo's ownership of these assets.

15. (SBU) In December 2005, pursuant to UNMIK Regulations 2002/12 and 2005/18, the Kosovo Trust Agency, an UNMIK organ, implemented a Plan for Transformation for Kosovo's energy sector. "Deeds of Transfer"

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and "Declarations of Subscription and Contribution in Kind" established Valac substation, the buildings that house it, the land on which it sits, and the lines that feed it and emanate from it, as the property of Kosovo's energy conglomerate KEK or its energy transmission entity KOSTT. Public notices to this effect were issued in the Serbian and the Kosovo press, and no legal challenges were filed. Moreover, Kosovo's Energy Regulatory Office, another UNMIK-established organ, gave KEK and KOSTT unique licenses that make them the sole legal distribution and transmission companies for the entire territory of Kosovo.

16. (SBU) These decisions, deeds and documents not only form the basis of KEK's/KOSTT's claim to Valac, but also for all other substations, lines, generation and distribution capacity throughout the country. In August 2009, in spite of the fact that the Strpce substation -- like Valac today -- was occupied by employees of Serbia's EPS, they did not claim legal rights to ownership and yielded control of the substation to KEK. KEK and KOSTT have the same ownership rights to Valac substation that they have to Strpce substation. To argue anything to the contrary is a dangerous recognition of "Northern Exceptionalism" and partition.

VALAC METER READING A GOOD FIRST STEP, NOT AN ANSWER  
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17. (SBU) Some who agree that KEK and KOSTT hold the rights to Valac substation would trumpet a recent agreement to reestablish KEK's regular reading of meters on high voltage lines at Valac as important progress. While KEK's access is important, its importance is as tactical progress. Freezing in place EPS' control of Valac substation with monthly meter reading by KEK is no more a solution to energy regularization in the north, than granting parents visitation rights would be a solution to a kidnapping.

MYTH 3: EPS CONTROL OF VALAC WILL FACILITATE TALKS  
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18. (SBU) Since the establishment of KFOR and EULEX security cordons around the Valac substation, some in the international community have argued against any action to facilitate KEK's access to the substation or to assert its ownership of it. No doubt, one reason

for such a position is the conviction that tension and conflict of any kind must be avoided at all costs. Another rationale given for such a position is that continued EPS control of Valac will facilitate talks toward a commercial solution to electrical power provision and payment in the North. Again, such an assertion does not conform to the realities of the past year.

¶9. (SBU) These arguments are not only wrong but backwards. It is KEK control of Valac that would be conducive to a regularization of commercial relations for power. EPS control of the substation has done anything but that. Rather than facilitate talks, EPS control of Valac -- exercised exclusively since October 2009 -- has led only to illegal modifications to the substation to facilitate unlicensed (and therefore illegal) provision of electrical services by Serbian entities in the North. Continued, unchallenged EPS control of Valac won't lead to talks, but to the continued retrofitting of the station to permit EPS to provide more power to the North. These efforts will continue to take place without licenses from Kosovo's UNMIK-established Energy Regulatory Office, and in contravention of existing licenses to KEK and KOSTT to provide services to the whole territory of Kosovo. The end result, as in the cases above, would be clear violations of UNMIK law and regulations, Kosovo state firms' loss of property, and the effectual strengthening of the bonds between the northern municipalities and Serbia.

¶10. (SBU) If it is a commercial solution that is sought, a commercial solution has been on the table for some time. KEK has advocated since May 2009 for an electrical services company agreement with Serbia's EPS, through which EPS could register a Kosovo firm that could serve as a subcontractor for KEK, providing services including billing and meter reading to majority Kosovo Serb communities like North Mitrovica, Zvecan, Zubin Potok, and Leposavic (previous versions of the same proposal included Strpce and

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Gracanica, before KEK regularized payments in these areas without EPS participation). KEK's overtures have never been met with a serious, substantive response and it is hard to see how EPS' control of Valac will change this. (Note: Here, too, a record of these exchanges exists that documents this version of events. End note)

#### MYTH 4: A SERBIAN POWER DISTRIBUTOR IS THE ANSWER

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¶11. (SBU) Some, who claim to argue for a commercial solution, press the previous arguments further and contend that the introduction of a second, Serbian, power distributor would not only improve electricity distribution in the North, but would also be insurance against KEK's ability to politicize power or use it as a weapon. This argument, too, falls flat, as it assumes the same faulty challenges to KEK/KOSTT property rights, and in fact takes them one (harmful) step further.

¶12. (SBU) For a Serbian electricity provider to be established in the North, KEK and KOSTT would essentially be forced to cede control of assets that are theirs by legal right. In addition to annulling Kosovo firms' property rights directly, such a move would have second order negative consequences for these entities, by denigrating the value of the licenses KEK and KOSTT currently hold as sole providers for distribution and transmission for the whole territory of Kosovo. For KEK especially, this loss of assets, service territory and customers would wreck its value in privatization, unraveling years of work by USAID and others and placing in jeopardy comprehensive energy sector reform in Kosovo. If the provider operated only in the North, the scheme would advance partition. If, as some claim, the Serbian provider should operate in Kosovo Serb inhabited areas both north and south of the Ibar, even more damage would be done to the value of KEK's licenses and its privatization prospects, and electricity in Kosovo would officially become an "ethnic" commodity -- a prospect that we certainly should avoid.

COMMENT

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¶13. (SBU) Though some of the myths put forward are legal and others political, most are differing expressions of the same position -- negotiations of any kind are preferable to tensions or the possibility of hostilities of any kind. While perhaps tempting, this assertion must be rejected. The process of regularization of commercial relations for power that has taken place south of the Ibar was made possible thanks to a firm but reasonable stance toward Belgrade officials. Success there was an important step forward for Kosovo and a blow to the credibility of parallel structures, a success that opened vistas for Serbs for cooperation with other Kosovo institutions. If we are to succeed in the North, we must remain firm now, firm in defense of law, of property rights, and license rights. We must not rush to negotiate away property rights or the chance to privatize Kosovo's energy system. Similarly, we must not confuse today's conflict avoidance with an honest attempt at long-term risk management. If we succumb to arguments that would further separate Kosovo's North from the rest of the country, we will soon find that, far from solving problems, we are creating incentives for future challenges and encouraging the belief that partition is a real possibility. If left unchecked, both are likely to produce a more serious confrontation in the future than the one some are trying to avoid today.

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